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March 1, 1955

Policy and Procedure for Negotiated Contracts under the
Agricultural Marketing Act

I PURPOSE

The purpose of this memorandum is to outline the conditions and procedures for negotiated contract work under the Agricultural Marketing Act of 1946, 7 U. S. C., 4271; 7 U. S. C. 1624.

II POLICY

It is the policy of the Department and the Federal Extension Service to enter into contracts with public and private agencies, firms and individuals qualified to carry on educational and demonstrational work authorized by the Act where the work can be performed more effectively, more rapidly, or at less cost than if performed by the Department.

III NATURE OF CONTRACT WORK AUTHORIZED

Extension Service Work. Under Title II of the Research and Marketing Act, the Secretary is authorized to enter into contracts and agreements with States and agencies of States, private firms, institutions, and individuals for conducting Extension work, making and compiling reports and surveys, and carrying out other functions relating thereto when in his judgment the services or functions to be performed will be carried out more effectively, more rapidly, or at less cost than if performed by the Department of Agriculture.

IV NEGOTIATED CONTRACTS

- A Use. Contracts may be negotiated for the work authorized under the Agricultural Marketing Act (See III) without regard to Section 3709 Revised Statutes, as amended by Public Law 152, 81st Congress, where they are for research educational and service work in Agricultural Marketing either when specifications cannot be written with the degree of exactness required to permit competition or when for other reasons it is administratively determined to be advantageous to the Government. Although it is not required that bids be invited under such circumstances, the field should be canvassed in each case to determine what organization or individual can perform the work under the most advantageous conditions to the Government. (See attachment B, paragraph A.)
- B Small Business Concerns. In accordance with the Congressional intent as expressed in Public Law 152, 81st Congress, and Public Law 96, 82nd Congress, pertaining to negotiated contracts, as far as practicable, consideration should be given to negotiating a fair proportion of the contracts under this procedure with small business

concerns. (A small business concern has been defined for this purpose to be a firm, with its affiliates, which employs less than 500 people.)

- C Contracts to be on Job Basis. As a general rule, contracts approved during any fiscal year are to provide for the entire job which is contemplated to be performed under such contract, provided, of course, that no contract can extend for a period of more than four years from the date of signature by the contracting officer as provided in the Act. This plan will require the obligation of funds adequate to complete the job from the appropriation currently available at the time the contract is signed. Such a plan will enable prospective contractors to plan more effectively the total job which should result in the lowest cost to the Government, will eliminate the necessity for renegotiating in subsequent fiscal years, and will relieve any doubt as to the availability of funds for carrying the work to completion. It is recognized that there will be cases where the nature of the project is such as to make it undesirable or impracticable to provide for one contract to cover the entire project. There may be instances where it would be to the best interests of the Department to limit contracts as to either coverage or period. Contract provision should be made for changes or alterations in specifications should developments during the contract period necessitate such action, and for termination by the Department to protect the Government's interest in cases where the performance of the contractor is not in accordance with the required standards or anticipated results, or where it may otherwise be in the Department's interest to discontinue the contract.
- D Contracts to be on Fixed-Price Basis. Contracts on a fixed-price basis are preferred to those on other bases. This will insure in advance sufficient funds for completion of the work, will keep administrative expense of audit to a minimum and otherwise contribute to a more effective program. The procedure contained in this memorandum applies primarily to contracts on a fixed-price basis. Proposed contracts on any other basis shall be approved by the Office of the Solicitor, Office of Budget and Finance and Contracting Officer, Federal Extension Service prior to any negotiations.
- E. Approval of Questionnaires or Other Forms for Collection of Data. Plans, forms and reporting requirements under contracts which provide for the collection of identical information from 10 or more persons (other than Federal employees considered as such) require approval by the Bureau of the Budget through the Division of Management Operations. (See 1 AR 561 and attachment B, paragraph E of this memorandum concerning timing and conditions of securing such approval.)
- F. Consideration and Payment. Contracts may be for specific jobs of work such as weekly marketing bulletins, handbooks on marketing of commodities, etc., where payments may be related to measurable items. There may be contracts also for nonspecific or general work, where results cannot be guaranteed. In the latter case, the contract actually is for a stipulated level of effort by the contractor in a field of extension. Payments in such cases, in fixed-price contracts,

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are based on the contracting officer's satisfaction as to the contractor's efforts, although they may not reflect anticipated results. The contract should specify in as much detail as practicable the exact work to be performed by the contractor in order that there may be a measuring of performance. Where possible, definite criteria for such measurement of work performed or effort expended should be provided as the basis for making payments.

Advance, progress, or other payments may be made without regard to the provisions of Section 3648, Revised Statutes. The determination of how and when payment shall be made must be made a part of the contract, and the contract should also include a definite basis on which payments are to be made, such as the submission and acceptance of an acceptable report.

- G Bonding Requirements. Generally, performance bonds should be required in cases where advance payments are being made to other than public agencies. Where segments or units of the work on which progress payments are to be based would be of little or no value unless the total job covered by the contract is brought to full completion, a performance bond should be required in contracts with other than public agencies. Educational work of its very nature may be experimental and, therefore, in certain cases may be difficult, if not impossible, to guarantee anything except a report of performance of work aimed at reaching a particular objective. Consequently, in cases where in the opinion of the Director of the originating division it would be impracticable to require bonds, or the requirement of bonds would be an unwarranted impediment in securing a contract, a recommendation to waive the requirements for bond, supported by a statement of pertinent circumstances, shall be submitted to the Director, Division of Management Operations, for approval by the contracting officer prior to preliminary clearance of the contract by the Department's Office of the Solicitor and Office of Budget and Finance.

In cases not involving advance or progress payments (discussed in the preceding paragraph) the requirement as to furnishing a bond will be discretionary with the program division. A bond should be provided, however, in those instances where there is a possibility of loss to the Government, as the use of the bond is preferable to a special damage clause in the contract.

- H Period of Contract. Contracts may be made for work to continue not to exceed four years from the date of such contracts and unexpended balances of appropriations properly obligated under contracts may remain upon the books of the Treasury for not more than five fiscal years, in addition to the fiscal year in which executed, before being placed in the surplus fund of the Treasury.

- I Patent and Publication Policies. The law requires that the results of educational work conducted under contract be made available to the public through dedication, assignment to the Secretary of Agriculture, or such other means as may be determined by the contracting officer to best serve the public need.

Alternative language is provided in attachment A for use depending on whether the contractor is a publicly-financed or privately-owned organization.

- J Release of Current Information. No information may be released by the contractor concerning the initiation, progress, or results of the project except with the concurrence of the contracting officer, or his designated representative, either in a specific release or under terms of the contract.

V PROCEDURE FOR CONTRACTING UNDER THE AUTHORITY OF THE AGRICULTURAL MARKETING ACT

- A Program Development. The primary responsibility of working up tentative programs and estimated costs of educational programs subject to performance by contract lies with the Director, Division of Agricultural Economics Programs, or other subject matter specialists informally designated by the Division Director. By the 15th of May each year the Division Director will submit a memorandum in duplicate to the Administrator, Federal Extension Service containing a brief resume of contracts proposed during the ensuing fiscal year. This resume should include brief information on the object, the need for work, relationship to other work, whether within the scope of presently approved work projects, possible contractors, if known, estimate of cost and duration. The Administrator will review the programs proposed and will establish lines of work and priorities and approximate limits of money available in each area when the amount of contract funds available to the Federal Extension Service is known, and notify the Contracting Officer and the Director, Division of Agricultural Economics Programs of his decisions. All contract funds, however, will be held by the Accounting Branch, Division of Management Operations, Federal Extension Service in the unallotted balance until execution of a contract (See paragraph VIII).

- B Selection of Contractor and Negotiation of Contracts.

1 The Agricultural Economics Programs Division will:

- a Contact prospective contractors, appraise their qualifications and ability to undertake and complete the project, and select the one best able to perform the educational work within the scope of the contemplated project and limits of the funds available. In selecting a contractor and negotiating the contract, particular care is to be exercised during any necessary preliminary discussions with prospective contractors to make sure that commitments

are not made, or any action taken, which can be construed by a prospective contractor as a commitment, prior to Departmental clearance of the contract draft.

- b Negotiate with the selected contractor as to the proposed methods of carrying on the Extension program. The standard contract form shall be discussed with the contractor and specific provisions outlining specifications, method of payment, and other administrative considerations not covered by the standard paragraphs may be developed jointly.
 - c Determine that the contractor's quoted price, after thorough exploration, is just and reasonable. (See attachment B, paragraph D.)
 - d Collaborate with the Division of Management Operations in developing provisions pertaining to specifications, and the work to be done, duration, methods of payment and/or other administrative aspects of the contract.
- 2 The Division of Management Operations will:
- a Collaborate with the program division as indicated in 1 d above and will participate in the negotiations as may be desirable.
- C Contract and Justification Statement Drafts (or amendment to contract)
- 1 Forms. Attachment A contains standard paragraphs covering certain legal requirements and general policies of the Department which shall be part of all contracts. These standard paragraphs will be printed as an attachment for incorporation in the contracts by reference, similar to the manner in which comparable standard paragraphs are included in Government construction and supply contracts.
- Attachment B outlines certain requirements for the justification statement.
- 2 The Agricultural Economics Programs Division will:
- a Prepare the contract or amendment draft (see attachment A for form), together with a draft of a memorandum of justification to the Contracting Officer, the Assistant Administrator for Administration, Federal Extension Service, outlining the justification for the contract (see attachment B for content), and forward 7 copies of each of these documents to the Director, Division of Management Operations.

3 The Division of Management Operations upon receipt of above will:

a Forward copies as follows:

- (1) Branches of Division of Management Operations for review with relationship to budgeted program and funds.
- (2) Contracting Officer - for review and clearance.
- (3) Department's Office of the Solicitor - legal aspects.
- (4) Department's Office of Budget and Finance - fiscal and procurement aspects.

b Correlate any suggestions received by Federal Extension Service Offices.

c If necessary arrange a meeting of representatives of the Office of the Solicitor and the Office of Budget and Finance and Division of Agricultural Economics Programs of Federal Extension Service for final approval of a draft which will constitute the basis for final negotiations with the proposed contractor.

d After approval prepare 9 copies of the contract and forward 4 to the prospective contractor under signature of the Contracting Officer with request that 3 be signed and returned.

D Final Execution.

1 The Division of Management Operations, after the 3 copies of the contract have been returned by the contractor, shall review and route the original and 2 signed copies of the contract and memorandum of justification to:

- a The Director, Division of Agricultural Economics Programs for final approval and initials on contract.
- b The Department's Office of the Solicitor for final approval and initials on contract.
- c The Department's Office of Budget and Finance for final approval and initials on contract.
- d The Contracting Officer, Federal Extension Service, for signature.

E. Numbering and Distribution.

The Division of Management Operations, Cooperative Funds Branch, will number the contract and make the following distribution:

- 1 One signed copy for return to contractor transmitted over the signature of the Contracting Officer.
- 2 Two conformed copies to the Division of Agricultural Economics Programs.
- 3 One conformed copy to the Department's Office of the Solicitor.
- 4 One conformed copy to the Department's Office of Budget and Finance.
- 5 One signed copy to accompany voucher to Accounting Branch, Division of Management Operations, for General Accounting Office.
- 6 One conformed copy to Accounting Branch, Division of Management Operations.
- 7 One conformed copy to Contracting Officer.
- 8 One signed copy to be retained in Cooperative Funds Branch.

VI RESPONSIBILITY FOR INSPECTION AND FOLLOW-UP PHASES OF THE CONTRACT

A The Agricultural Economics Programs Division will:

- 1 Make periodic inspection and regular follow-up (properly recorded by the programs division) to determine that the work is satisfactorily conducted in accordance with the terms and specifications of the contract, and for the prompt initiation of any needed corrective action.
- 2 Initiate prompt action to change, amend, or terminate the contract should developments require such action.
- 3 Request or advise on payments of installments of funds as outlined in paragraph VIII.
- 4 Coordinate this work with other Extension work.
- 5 Obtain and analyze reports from the contractor.
- 6 Perform other functions that may be specifically set forth in the contract as vested in the designated representative of the Contracting Officer.

B The Division of Management Operations will:

Make such general "spot check" reviews or regular audits each year as it may determine essential. Among other factors to be reviewed will be determination if the contract price was properly estimated, particularly where the character of the work made estimating difficult, and ascertaining whether estimates have been carefully enough prepared as a means of guidance for the Service in the negotiation of future contracts. Ordinarily, the review will be done at the time of annual examination of State Cooperative Extension accounts, or more often if deemed necessary.

VII APPROVAL OF PUBLICATIONS AND PRESS RELEASES CONCERNING CONTRACT WORK

Proposed publications and press releases with respect to initiation or progress of the work under contract shall be prepared by or under the general direction of the Division of Agricultural Economics Programs, and cleared with the Director, Division of Information Programs, Federal Extension Service, prior to release. An exception to this rule is made concerning information released by public agencies where the contract with such agencies specifically provides for release of such information by either party.

VIII FUNDS

- A Funds under the contract limitation will be earmarked by the Accounting Branch, Division of Management Operations, Federal Extension Service until contracts are executed. When a contract is executed the Cooperative Funds Branch, Division of Management Operations, will prepare a voucher covering the initial contract payment which is sent to the State for execution by the proper contracting official. Upon receipt of executed voucher the original copy of the contract for General Accounting Office and a conformed copy is transmitted to the Accounting Branch, Division of Management Operations, for handling. Subsequent payments, if any, will be processed by Cooperative Funds Branch, Division of Management Operations, in accordance with terms of the contract when the Division of Agricultural Economics Programs advises that contract conditions have been met.
- B Funds set aside for contract work may not be used for other purposes. Obligated funds may be held on the books of the Treasury for not more than five fiscal years, in addition to the fiscal year in which the contract is executed.

IX REPORTS

- A Financial Reports. Special instructions will be issued concerning the need for various financial reports required from time to time.
- B Report on Completion. The Division of Agricultural Economics Programs shall:

Submit a report, in duplicate, at the conclusion of the work showing satisfactory completion in accordance with the specifications, including a brief outline of the results obtained, to the Director, Division of Management Operations, (one of which will be sent to the Administrator, Federal Extension Service).

- C Report on all Contracts. The Division of Management Operations shall:

Prepare a report on contracts at the end of each fiscal year showing:

- 1 Date executed
- 2 Contractor
- 3 Project
- 4 Amount of contract
- 5 Brief statement on the purpose
- 6 Status (term, whether completed, etc.)

Assistant Administrator
Federal Extension Service



